IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10578 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)

Versus

KANTI SOMAJI THA THAKORE - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
Ms. SJ SHAIKH for MR IM PANDYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 11/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner – Ahmedabad Municipal Corporation has challenged the judgment and award dated 5.9.1998 passed by the Presiding Officer,

Labour Court, Ahmedabad by which the petitioner is directed to pay Rs.25070/- to the respondent workman which is due.

2. Being aggrieved and dissatisfied by the said judgment and award dated 5.9.1998 passed by the Presiding Officer, Labour Court, Ahmedabad in Recovery Application No.3421 of 1991, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. I have given my thoughtful consideration to the submissions made by the learned advocates for the parties and also perused the material on record.

4. Having heard the learned advocates for the parties and having perused the material on record, it appears that this Court (Coram: R.Balia,J) had admitted the matter on 26.2.1999 and in the meanwhile also stayed the operation of the impugned award.

5. It can be seen from the record that the respondent workman was appointed as Conductor on 1.11.1963 and thereafter, he was given permanent appointment from 1.2.1964. It also appears that, thereafter, he was provided the work as Helper Clerk. Ultimately, the Union approached the Industrial Tribunal at Ahmedabad by way of filing Reference No.315 of 1984. The

Tribunal, after considering the evidence on record and hearing the learned advocates for the parties, passed the order on 20.12.1989 and directed the petitioner to find out from its record the date from which such workmen were performing the duty of Helper Clerk and thereafter, they should be placed in the pay scale of Rs.260-400. It is submitted by Mr.Munshaw, learned advocate appearing for the petitioner that the petitioner Corporation has determined the date of 28.9.1983 for giving such benefit and accordingly made the payment of all monetary benefits including the arrears. It is also submitted that the respondent workman retired voluntarily with effect from 1.9.1992. However, prior to that the respondent workman approached the Labour Court at Ahmedabad by way of filing Recovery Application No.3421 of 1991 and prayed for a direction to the petitioner to pay the amount of Rs.25070/- Ultimately, the Labour Court, Ahmedabad by its order dated 5.9.1998 directed the petitioner to pay the aforesaid amount of Rs.25070/- to the respondent wokrman.

6. It is required to be noted that the respondent workman had filed Recovery Application No.3421 of 1991 under Section 33-C(2) of the Industrial Disputes Act, 1947.

Section 33-C(2) reads as under:

> “Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)”

7. In view of the aforesaid aspect of the matter and considering the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947, the Labour Court has no jurisdiction to decide the recovery application preferred by the respondent workman, as, there was no effective adjudication by the Labour Court in the reference about the entitlement of a particular amount as claimed by the respondent workman. The question of determining the benefit was left to the discretion of the petitioner Corporation and to find out from its record the date from which period, the respondent workman was performing the duty of Helper Clerk and

thereafter, he should be placed in the pay scale of Rs.260-400. Even, after having fixed the pay-scale as per the direction of the Industrial Tribunal, the Ahmedabad Municipal Corporation has paid Rs.3375=24 being the amount of arrears to the respondent workman and this fact has not been denied by the learned advocate appearing on behalf of the respondent workman.

8. In this view of the matter, now nothing requires to be done in this matter. This petition stands disposed of accordingly. No costs. Rule is discharged. Interim relief granted earlier stands vacated.

(Sharad D.Dave,J)

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